

## 2005 DRAFTING REQUEST

### Assembly Substitute Amendment (ASA-AB344)

Received: 05/21/2005

Received By: phurley

Wanted: As time permits

Identical to LRB:

For: Terry Musser (608) 266-7461

By/Representing:

This file may be shown to any legislator: NO

Drafter: phurley

May Contact:

Addl. Drafters:

Subject: Drunk Driving - penalties

Extra Copies:

Submit via email: YES

Requester's email: Rep.Musser@legis.state.wi.us

Carbon copy (CC:) to:

---

#### Pre Topic:

No specific pre topic given

---

#### Topic:

Drunk driving

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#### Instructions:

See Attached

---

#### Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	phurley 05/21/2005	jdye 05/23/2005		_____			
/P1	phurley 07/08/2005	wjackson 07/11/2005	rschluet 05/23/2005	_____	sbasford 05/23/2005		
/1	phurley 07/13/2005	wjackson 07/13/2005	jfrantze 07/12/2005	_____	lemery 07/12/2005	lemery 07/12/2005	
/2			chaugen	_____	sbasford	sbasford	

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
			07/13/2005	_____	07/13/2005	07/13/2005	

FE Sent For:

<END>

07/13/2005

→ sent directly to ACC ~~office~~ office

→ per Kathy in Musser's office

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/1		12WJ 7/13	jfrantze 07/12/2005	_____	lemery 07/12/2005	lemery 07/12/2005	

Handwritten notes: Ch 213, 7/13, 7/25/05

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**<END>**

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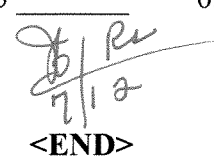
Instructions:

See Attached

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/P1		1 wj 7/11	rschluet 05/23/2005		sbasford 05/23/2005		

FE Sent For:


  
 <END>

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**Topic:**

Drunk driving

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**Instructions:**

See Attached

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/?	phurley	/P1 <sup>S</sup> /23 JW					
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FE Sent For:

<END>

## Hurley, Peggy

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**From:** Sobotik, John  
**Sent:** Thursday, May 19, 2005 3:23 PM  
**To:** Hurley, Peggy  
**Subject:** RE: AB 344 Sub

*Solo*

Hi Peggy. I went down to the hearing on this today and Rep. Musser explained that this needs a /2.

Sitting around down there, we found another technical glitch. The way some people read the /1 counting, as drafted, if the current offense is more than 10 years after any other offense, THAT current offense isn't counted when determining sentencing. I think that can be corrected by specifying that you count the current offense and all the prior offenses under the counting scheme.

Musser told me that he'd contact you and give you permission to work with me to develop a /2 that we're 100% confident of. Let me know what you want me to do.

- John

-----  
John Sobotik  
Asst. General Counsel  
Wisconsin Dept. of Transportation  
4802 Sheboygan Avenue, Room 115B  
P.O. Box 7910  
Madison, WI 53707-7910  
Phone: (608) 267 9320  
Fax: (608) 267 6734

-----Original Message-----

**From:** Hurley, Peggy [mailto:Peggy.Hurley@legis.state.wi.us]  
**Sent:** Wednesday, May 18, 2005 2:50 PM  
**To:** Sobotik, John  
**Subject:** RE: AB 344 Sub

No, I think you are right about the problem, but there wasn't time to do a /2 before Musser had to introduce the bill in order for it to come into committee tomorrow. I'm going to amend the bill to take care of it.

-----Original Message-----

**From:** Sobotik, John  
**Sent:** Wednesday, May 18, 2005 2:47 PM  
**To:** Hurley, Peggy  
**Subject:** RE: AB 344 Sub

It just had that weird problem I told you about this a.m. I wondered whether you'd received any input on whether to leave the problem in or remove it.

I've told my folks that this has the problem I described this a.m.

1990 OWI - 1st offense  
1992 OWI - 2nd offense  
2003 OWI - 3rd offense  
2014 OWI - 3rd offense (2003 doesn't count because it isn't within 10 years of anything else.)

Just weirdness, that's all. I wondered whether it is intentional.

- John

-----  
John Sobotik  
Asst. General Counsel  
Wisconsin Dept. of Transportation

4802 Sheboygan Avenue, Room 115B  
P.O. Box 7910  
Madison, WI 53707-7910  
Phone: (608) 267 9320  
Fax: (608) 267 6734

-----Original Message-----

**From:** Hurley, Peggy [mailto:Peggy.Hurley@legis.state.wi.us]  
**Sent:** Wednesday, May 18, 2005 2:38 PM  
**To:** Sobotik, John  
**Subject:** RE: AB 344 Sub

When did I send out the sub? I think it went out to Musser's office this morning. Why?

-----Original Message-----

**From:** Sobotik, John  
**Sent:** Wednesday, May 18, 2005 2:34 PM  
**To:** Hurley, Peggy  
**Subject:** FW: AB 344 Sub

I'm curious. When did you send this out?

---

**From:** Boardman, Kristina [mailto:Kristina.Boardman@legis.state.wi.us]  
**Sent:** Wednesday, May 18, 2005 11:22 AM  
**To:** Anne Emerson; Austin, Michael; Bacher, Luke; Carol Buckmaster; Chris Reader; Christopher, Marc; Dauscher, Sara; Eleanora Tribys; Jennifer Western; John Anderson; Judy Kelly; Julie Johnson; Kraak, Maureen; Luke Hilgemann; Michel, James; Minick, Wendy; Philip Cardis; Phillips, Matt; Randy Romanski; Rep.Davis; Rep.Friske; Rep.Gronemus; Rep.Hahn; Rep.Lamb; Rep.Molepske; Rep.Nelson; Rep.Ott; Rep.Petrowski; Rep.Sherman; Rep.Steinbrink; Rep.Suder; Rep.VanRoy; Rep.Vruwink; Rose Klein; Scott, Katie; Tanya Hein; Tim Gary; William Cross; Amy Boyer; Barb Thoni (CWAG); Bill Broydrick; Bill McCoshen (Capitol Consultants); Bob Bartlett (Petroleum Marketers); Bob Cook (TDA); Casey Perry (Troopers); Chet Gerlach; Chris Snyder (WATDA); Cindi Broydrick; Craig Thompson (WCA); Dan Thompson (League of Municipalities); Ed Huck (Alliance of Cities); Eric Petersen (Capitol Consultants); Ernie Stetenfeld (AAA); Gail Sumi; Gary Goyke (WI Urban and Rural Transit); Gary Williams (WATDA); Greg Hubbard; Guarasci, Patrick - Office of Governor Jim Doyle; Gunnar Bergersen; Hector Colon; Janet Swandby; Kari Kinnard (MADD); Kathi Kilgore; Kent Woods (WI Towns); Kevin Soucie; Kevin Traas (WI Motor Carriers); Louis Schubert; Marc Bentley; Marjorie Ward (Bike Federation of WI); Mark O'Connell (WCA); Mary Ann Gerrard (WATDA); Matt Hauser (Petroleum Marketers); Matt Stohr (WCA); Michael Miller; Moyer, Andrew - Office of Governor Jim Doyle; Pat Stevens (WI Transportation Builders); Pete Christianson (Quarles & Brady); Plona, Katie - Office of Governor Jim Doyle; RJ Pirlot (WMC); Sam Gratz; Scott Stenger; Sheri Krause; Thomas Dwyer (UTU); Tom Howells (WI Motor Carriers); Tom Walker (WI Transportation Builders); Tonnon Byers, Anne; UTU; Ward Lyles (1000 Friends of WI); Wheeler Report  
**Cc:** Colbert, Kathie  
**Subject:** AB 344 Sub

Transportation Committee Members and Interested Persons:

Please find attached a substitute amendment to AB 344 - which is scheduled for a public hearing tomorrow (May 19th). The amendment language has been drafted based on input from Rep. Townsend and WisDOT Legal Counsel. An additional "technical change" to the sub may be forthcoming.

<< File: AB 344 Sub.pdf >>

---

Kristina Boardman, Committee Clerk  
Assembly Committee on Transportation  
Representative Ainsworth's Office  
608.266.3097 - phone  
kristina.boardman@legis.state.wi.us



offense involved the use of a vehicle.

THEN, when making that cross reference, do this:

convictions under ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total number of suspensions, revocations and other convictions counted under s. 343.307 (1) (a) to (f)...

Voila! No need for that stupid "this doesn't apply to 940.09(1) and 940.25 language. Much clearer.

#2

Ok, second, what we drafted doesn't QUITE hit what Musser asked for. Here are the scenarios we discussed.

1989 OWI - 1ST  
2000 owi - 1ST  
2012 owi - 1ST

THEN we discussed

1989 OWI - 1st  
1993 OWI - 2nd  
2005 OWI - 3rd  
2017 OWI - 4th

And, as I recall, Rep. Musser said he wanted every felony and everything after a felony conviction (940.09(1) or 940.25) or after a person commits 2 offenses in a 10-year period to count. [I think he said he always wants the felonies to count, which means that whatever comes after the felony, it will, at a minimum, be offense No. 2]

Thus, in the above example, even though the 2005 OWI is not within 10 years of any other OWI, I think Rep. Musser indicated he wanted that to count.

I'm not sure what we drafted does this. I think the way we drafted it, the 2005 would not count because it isn't within 10 years of any other OWI. You'll have to look at the language we came up with and parse it carefully to be sure.

But, consider whether this might work:

The court shall not count any offense that could be counted under s. 343.307(1) (a) to (f) if it did not occur within 10 years of any other offense that is countable under s. 343.307(1), except that all offenses that could be counted under s. 343.307 (1) shall be counted after either of the following:  
1. A conviction under s. 940.09(1) of s. 940.25, Stats.  
2. Conviction of 2 offenses that are countable under s. 343.307(1) (a) to (f) within a 10-year period.

This makes everything after 2 OWIs in 10 years count, and everything after a felony conviction count. I think THAT was what Rep. Musser indicated he intended. You might double check with his office if your recollection is not the same.

I hope this is helpful. This is NOT easy to draft, but I think this gets much closer to what he ultimately wants... And remember, I'm not looking at what we actually wrote yesterday -- I'm going from memory. These ideas need to be worked into the actual other language we worked on... if they are useful ideas at all.

Good luck,

John Sobotik

> -----Original Message-----  
> From: Sobotik, John  
> Sent: Wednesday, May 18, 2005 8:40 AM

> To: Hurley, Peggy  
> Subject: Not quite right!  
>  
>  
> I figured out a mistake in what we wrote yesterday. Will  
> provide a longer note in a few minutes!  
>  
> -----  
> John Sobotik  
> Asst. General Counsel  
> Wisconsin Dept. of Transportation  
> 4802 Sheboygan Avenue, Room 115B  
> P.O. Box 7910  
> Madison, WI 53707-7910  
> Phone: (608) 267 9320  
> Fax: (608) 267 6734  
>

## Hurley, Peggy

---

**From:** Sobotik, John  
**Sent:** Wednesday, May 18, 2005 10:36 AM  
**To:** Hurley, Peggy  
**Subject:** RE: AB344 - OWI Conviction Counting

I'm glad you find it helpful. You draft for a living, I don't, so I'm always hesitant to say too much.

One other thing I thought of with respect to breaking up s. 343.307(1)(c) is that it would be much easier to limit those offenses to offenses occurring on or after 1/1/89. It would be so much cleaner to say, "convictions under ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total number of suspensions, revocations and other convictions for offenses committed on or after January 1, 1989 and counted under s. 343.307 (1)(a) to (f)..."

Regardless of whether this bill makes it anywhere, let's try to remember this mechanism for cleaning up the 346.65 counting provisions... We can always incorporate it into the next OWI bill...

- John

-----  
John Sobotik  
Asst. General Counsel  
Wisconsin Dept. of Transportation  
4802 Sheboygan Avenue, Room 115B  
P.O. Box 7910  
Madison, WI 53707-7910  
Phone: (608) 267 9320  
Fax: (608) 267 6734

-----Original Message-----

**From:** Hurley, Peggy [mailto:Peggy.Hurley@legis.state.wi.us]  
**Sent:** Wednesday, May 18, 2005 10:07 AM  
**To:** Sobotik, John  
**Subject:** RE: AB344 - OWI Conviction Counting

Thanks, John. I appreciate your help, as always, and I think you're right about the "10 years between" language.

-----Original Message-----

**From:** Sobotik, John  
**Sent:** Wednesday, May 18, 2005 9:06 AM  
**To:** Hurley, Peggy  
**Subject:** AB344 - OWI Conviction Counting

Ok, Peggy, I figured out another potential error AND came up with an alternate way of excluding the 940.00 and 940.25 from the counting. Think about these 2 ideas:

#1

First -- to exclude 940.09(1) and 940.25 from the 343.307(1) list, simply break up 343.307(1)(c) and then leave the 940.09(1) and 940.25 items off the list... Like this:

Current law:

343.307(1)(c)  
(c) Convictions for violations under s. 346.63 (2) or 940.25, or s. 940.09 where the offense involved the use of a vehicle.

Change this to

343.307(1)(c) Convictions for violations under s. 346.63 (2) ~~or 940.25, or s. 940.09~~ where the offense involved the use of a vehicle.

Create

343.307(1)(g) Convictions for violations under 940.25, or s. 940.09 where the

50123/P1

stays

**ASSEMBLY SUBSTITUTE AMENDMENT 1,  
TO 2005 ASSEMBLY BILL 344**

5-23-05  
son

May 19, 2005 - Offered by Representatives MUSSER and TOWNSEND.

Regen

1 **AN ACT to amend** 343.23 (2) (b), 346.65 (2) (b), 346.65 (2) (c), 346.65 (2) (d), 346.65  
2 (2) (e) and 346.65 (2c); and **to create** 346.65 (2d) of the statutes; **relating to:**  
3 operating while intoxicated and providing a penalty.

***Analysis by the Legislative Reference Bureau***

Under current law, the Department of Transportation (DOT) maintains a driving record for every person who possesses a driver's license. When DOT receives notice that a person was convicted of an offense relating to operating certain vehicles while intoxicated or operating certain vehicles with a prohibited blood alcohol concentration (OWI-related offense), that information is kept permanently in the person's driving record. Also under current law, when a person commits an OWI-related offense, the court is required to consider the number of previous OWI-related offenses committed by the person to determine the person's penalty.

2003 Wisconsin Act 30 requires DOT to purge the record of a first violation from a driver's record if the person who committed the violation had a blood alcohol concentration between 0.08 and 0.1 at the time of the violation, if the person does not have a commercial driver license, if the violation was not committed by a person operating a commercial motor vehicle, and if the person does not commit another alcohol-related driving offense during the ten-year period following the violation.

This substitute amendment eliminates the requirements that DOT retain or purge certain OWI-related records, but forbids courts to count, for the purposes of

determining a penalty, any OWI-related offense that occurred within ten years of another OWI-related offense, so long as the offense does not involve causing serious bodily injury or death to another person

*or the person has not committed a third OWI-related offense.*

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

**SECTION 1.** 343.23 (2) (b) of the statutes, as affected by 2003 Wisconsin Acts 30, 33 and 320, is amended to read:

343.23 (2) (b) The information specified in pars. (a) and (am) must be filed by the department so that the complete operator's record is available for the use of the secretary in determining whether operating privileges of such person shall be suspended, revoked, canceled, or withheld, or the person disqualified, in the interest of public safety. ~~The record of suspensions, revocations, and convictions that would be counted under s. 343.307 (2) shall be maintained permanently, except that the department shall purge the record of a first violation of s. 23.33 (4c) (a) 2., 30.681 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b) after 10 years, if the person who committed the violation had a blood alcohol concentration of 0.08 or more but less than 0.1 at the time of the violation, if the person does not have a commercial driver license, if the violation was not committed by a person operating a commercial motor vehicle, and if the person has no other suspension, revocation, or conviction that would be counted under s. 343.307 during that 10-year period.~~ The record of convictions for disqualifying offenses under s. 343.315 (2) (h) shall be maintained for at least 10 years. The record of convictions for disqualifying offenses under s. 343.315 (2) (f) and (j), and all records specified in par. (am), shall be maintained for at least 3 years. The record of convictions for disqualifying offenses under s. 343.315 (2) (a) to (e) shall be maintained permanently, except that 5 years after a licensee transfers residency to

1 another state such record may be transferred to another state of licensure of the  
2 licensee if that state accepts responsibility for maintaining a permanent record of  
3 convictions for disqualifying offenses. Such reports and records may be cumulative  
4 beyond the period for which a license is granted, but the secretary, in exercising the  
5 power of suspension granted under s. 343.32 (2) may consider only those reports and  
6 records entered during the 4-year period immediately preceding the exercise of such  
7 power of suspension.

→ **INSERT A** ✓  
8 **SECTION 2.** 346.65 (2) (b) of the statutes is amended to read:

9 346.65 (2) (b) Except as provided in par. (f), shall be fined not less than \$350  
10 nor more than \$1,100 and imprisoned for not less than 5 days nor more than 6 months  
11 if the number of ~~convictions under ss. 940.09 (1) and 940.25~~ in the person's lifetime,  
12 ~~plus the total number of suspensions, revocations and other convictions counted~~  
13 ~~under s. 343.307 (1) within a 10-year period,~~ occurrences counted under sub. (2d)  
14 equals 2, ~~except that suspensions, revocations or convictions arising out of the same~~  
15 ~~incident or occurrence shall be counted as one.~~

16 **SECTION 3.** 346.65 (2) (c) of the statutes is amended to read:

17 346.65 (2) (c) Except as provided in pars. (f) and (g), shall be fined not less than  
18 \$600 nor more than \$2,000 and imprisoned for not less than 30 days nor more than  
19 one year in the county jail if the number of ~~convictions under ss. 940.09 (1) and 940.25~~  
20 ~~in the person's lifetime, plus the total number of suspensions, revocations and other~~  
21 ~~convictions counted under s. 343.307 (1),~~ occurrences counted under sub. (2d) equals  
22 3, ~~except that suspensions, revocations or convictions arising out of the same~~  
23 ~~incident or occurrence shall be counted as one.~~

24 **SECTION 4.** 346.65 (2) (d) of the statutes is amended to read:

1           346.65 (2) (d) Except as provided in pars. (f) and (g), shall be fined not less than  
2           \$600 nor more than \$2,000 and imprisoned for not less than 60 days nor more than  
3           one year in the county jail if the number of ~~convictions under ss. 940.09 (1) and 940.25~~  
4           in the person's lifetime, plus the total number of suspensions, revocations and other  
5           ~~convictions counted under s. 343.307 (1), occurrences counted under sub. (2d) equals~~  
6           4, ~~except that suspensions, revocations or convictions arising out of the same~~  
7           ~~incident or occurrence shall be counted as one.~~

8           **SECTION 5.** 346.65 (2) (e) of the statutes is amended to read:

9           346.65 (2) (e) Except as provided in pars. (f) and (g), is guilty of a Class H felony  
10          and shall be fined not less than \$600 and imprisoned for not less than 6 months if  
11          the number of ~~convictions under ss. 940.09 (1) and 940.25 in the person's lifetime,~~  
12          ~~plus the total number of suspensions, revocations and other convictions counted~~  
13          ~~under s. 343.307 (1), occurrences counted under sub. (2d) equals 5 or more, except~~  
14          ~~that suspensions, revocations or convictions arising out of the same incident or~~  
15          ~~occurrence shall be counted as one.~~

16          **SECTION 6.** 346.65 (2c) of the statutes is amended to read:

17          346.65 (2c) In sub. (2) (b) to (e) (2d), the time period shall be measured from  
18          the dates of the refusals or violations that resulted in the revocation or convictions.  
19          If a person has a suspension, revocation or conviction for any offense under a local  
20          ordinance or a state statute of another state that would be counted under s. 343.307  
21          (1), that suspension, revocation or conviction shall count as a prior suspension,  
22          revocation or conviction under sub. (2) (b) to (e) (2d).

23          **SECTION 7.** 346.65 (2d) of the statutes is created to read:

24          346.65 (2d) In sub. (2) (b) to (e), the court shall count the number of convictions  
25          under ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total number of

(a) to (f)

1 suspensions, revocations, and other convictions counted under s. 343.307 (1), except  
2 that:

3 (a) The court shall count any suspensions, revocations, or convictions arising  
4 out of the same incident or occurrence as one.

5 (b) The court shall not count any suspension, revocation, or conviction counted  
6 under s. 343.307 (1) not arising out of the same incident or occurrence and not  
7 occurring within 10 years of another suspension, revocation, or occurrence. This  
8 paragraph shall not apply to convictions under ss. 940.09 (1) and 940.25.

9 **SECTION 8. Effective date.**

10 (1) This act takes effect on September 30, 2005.

11 Section # Initial applicability (end) (circle)

(#) This act first applies to offenses committed on the effective date of this subsection (circle)

Insert B

✓ move  
↓

(end)



2005-2006 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRBs0123/?ins  
PJH:.....

1 INSERT A:

2 SECTION 1. 343.307 (1) (c) of the statutes is amended to read:

3 343.307 (1) (c) Convictions for violations under s. 346.63 (2) or 940.25, or s.  
4 940.09 where the offense involved the use of a vehicle.

History: 1977 c. 193; 1981 c. 20, 184; 1985 a. 80, 337; 1987 a. 3; 1989 a. 105, 271, 359; 1991 a. 39, 277; 1995 a. 448; 1997 a. 84; 2003 a. 33, 97.

5 SECTION 2. 343.307 (1) (g) of the statutes is created to read:

6 343.307 (1) (g) Convictions for violations under s. 940.25, or 940.09 where the  
7 offense involved the use of a vehicle.

8

9 INSERT B:

10 SECTION 3. 346.65 (2d) of the statutes is created to read:

11 346.65 (2d) (a) In sub. (2) (b) to (e), the court shall count the current offense,  
12 but may not count any suspension, revocation, or conviction described in s. 343.307  
13 (1) (a) to (f) that occurred before January 1, 1989, or that did not occur within 10 years  
14 of any other suspension, revocation, or conviction that is described in s. 343.307 (1),  
15 except that the court shall count all suspensions, revocations, or convictions that are  
16 described in s. 343.307 (1) after either of the following:

17 1. The person is convicted under ss. 940.09 (1) or 940.25.

18 2. The person has received a suspension or revocation for, or has been convicted  
19 of, two offenses that are described in s. 343.307 (1) (a) to (f) within a 10-year period.

20 (b) The court shall count any suspensions, revocations, or convictions arising  
21 out of the same incident or occurrence as one.

## Hurley, Peggy

---

**From:** Sobotik, John  
**Sent:** Thursday, May 26, 2005 11:21 AM  
**To:** Hurley, Peggy; Basford, Sarah  
**Cc:** Lawrence, Minette  
**Subject:** FW: Draft review: LRB 05s0123/P1 Topic: Drunk driving

Dear Peggy and Sarah,

I reviewed the draft and have some comments on 346.65 (2d) (a) (marked up below). I think the draft would allow the counting of 2 regular OWIs within 10 years of each other committed in the 1970's to act as a "starter" for counting. That would be inconsistent with Rep. Musser's intention and create more problems, since we don't have accurate records for before 1/1/89. Maybe the (2d)(a)2. needs the 1/1/89 date in it?

Also, it seems to me that the tense in 1. and 2. needs to be consistent. Since we are talking about counting past offenses, I think 2.'s past tense is better.

Finally, after reading this several times, it still seemed to read oddly in that there was nothing at the beginning talking about counting or about prior offenses, but then there were exceptions to prior conviction counting. It seemed to me to read better if we added something about counting and prior offenses to the introductory clause before the exception.

Do those suggestions make sense to you?

Finally, do we need to do anything to the refusal statute, s. 343.305(9) and (10)? It seems to me that we need to fix that as well so that these old OWI records become useless. I marked up the current statute for ideas, but please don't rely on them.

- John

346.65 (2d) (a) In counting occurrences under sub. (2) (b) to (e), the court shall count the current offense and prior offenses, but may not count any suspension, revocation, or conviction described in s. 343.307

(1) (a) to (f) that occurred before January 1, 1989, or that did not occur within 10 years of any other suspension, revocation, or conviction that is described in s. 343.307 (1), except that the court shall count all suspensions, revocations, or convictions that are described in s. 343.307 (1) after either of the following:

1. The person is was convicted under s. 940.09 (1) or 940.25.
2. The person has received a suspension or revocation for, or has been convicted of, 2 offenses that are described in s. 343.307 (1) (a) to (f) within a 10-year period and were committed on or after January 1, 1989.

(b) The court shall count any suspensions, revocations, or convictions arising out of the same incident or occurrence as one.

-----  
REFUSALS

(b)  
343.305(10)(b)1.

1. ~~Except as provided in subs. 3. and 4., the~~ The court shall revoke the person's operating privilege under this paragraph according to the number of previous suspensions, revocations or convictions committed on or after January 1, 1989, that would be counted under s. 343.307 (2)(a) to (g) plus the number or previous convictions under s. 940.09(1) or 940.25. Suspensions, revocations and convictions arising out of the same incident shall be counted as one. If a person has a conviction, suspension or revocation for any offense that is counted under s. 343.307 (2), that conviction, suspension or revocation shall count as a prior conviction, suspension or revocation under this subdivision unless the offense did not occur within 10 years of any other offense and did not follow any 10-year period in which the person was convicted of 2 or more offenses that could be counted under s. 343.307(2).

343.305(10)(b)2.

2. Except as provided in subd. 3., 4. or 4m., ~~for the first improper refusal,~~ the court shall revoke the person's operating privilege for one year. After the first 30 days of the revocation period, the person is eligible for an occupational license under s. 343.10.

[Note: I don't think you want the "first" language in here, because it may actually be a second but the "first" may be outside the counting window. In the OWI law, 1st offense is just the default penalty if nothing else applies. Seems to me this should be consistent?]

343.305(10)(b)3.

3. ~~Except as provided in subd. 4m., if~~ If the number of previous suspensions, revocations or convictions counted under ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total number of other convictions, suspensions, and revocations counted under s. 343.307 (2), subd. 1 within a 10-year period equals 2, the court shall revoke the person's operating privilege for 2 years, unless a longer period of revocation is required under subd. 4m. After the first 90 days of the revocation period or, if the total number of convictions, suspensions, and revocations counted under this subdivision within any 5-year period equals 2 or more, after one year of the revocation period has elapsed, the person is eligible for an occupational license under s. 343.10 if he or she has completed the assessment and is complying with the driver safety plan.

343.305(10)(b)4.

4. ~~Except as provided in subd. 4m., if~~ If the number of previous suspensions, revocations or convictions counted under ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total number of other convictions, suspensions, and revocations counted under s. 343.307 (2), subd. 1 equals 3 or more, the court shall revoke the person's operating privilege for 3 years, unless a longer period of revocation is required under subd. 4m. After the first 120 days of the revocation period or, if the total number of convictions, suspensions, and revocations counted under this subdivision within any 5-year period equals 2 or more, after one year of the revocation period has elapsed, the person is eligible for an occupational license under s. 343.10 if he or she has completed the assessment and is complying with the driver safety plan.

343.305(10)(b)4m.

4m. If there was a minor passenger under 16 years of age in the motor vehicle at the time of the incident that gave rise to the improper refusal, the applicable minimum and maximum revocation periods under subd. 2., 3. or 4. for the improper refusal are doubled.

343.305(10)(b)5.

5. The time period under this paragraph shall be measured from the dates of the refusals or violations which resulted in revocations or convictions.

-----  
John Sobotik  
Asst. General Counsel  
Wisconsin Dept. of Transportation  
4802 Sheboygan Avenue, Room 115B  
P.O. Box 7910  
Madison, WI 53707-7910  
Phone: (608) 267 9320  
Fax: (608) 267 6734

-----Original Message-----  
From: Basford, Sarah  
Sent: Monday, May 23, 2005 12:55 PM  
To: Rep.Musser  
Subject: Draft review: LRB 05s0123/P1 Topic: Drunk driving



LRBs0123\_P1

Following is the PDF version of draft LRB 05s0123/P1.

1  
TWLJ

PRELIMINARY DRAFT – NOT READY FOR INTRODUCTION  
ASSEMBLY SUBSTITUTE AMENDMENT ,  
TO 2005 ASSEMBLY BILL 344

by  
7-12-05  
9.m

reagan

1 AN ACT *to amend* 343.23 (2) (b), 343.307 (1) (c), 346.65 (2) (b), 346.65 (2) (c),  
2 346.65 (2) (d), 346.65 (2) (e) and 346.65 (2c); and *to create* 343.307 (1) (g) and  
3 346.65 (2d) of the statutes; **relating to:** operating while intoxicated and  
4 providing a penalty.

---

***Analysis by the Legislative Reference Bureau***

Under current law, the Department of Transportation (DOT) maintains a driving record for every person who possesses a driver's license. When DOT receives notice that a person was convicted of an offense relating to operating certain vehicles while intoxicated or operating certain vehicles with a prohibited blood alcohol concentration (OWI-related offense), that information is kept permanently in the person's driving record. Also under current law, when a person commits an OWI-related offense, the court is required to consider the number of previous OWI-related offenses committed by the person to determine the person's penalty.

2003 Wisconsin Act 30 requires DOT to purge the record of a first violation from a driver's record if the person who committed the violation had a blood alcohol concentration between 0.08 and 0.1 at the time of the violation, if the person does not have a commercial driver license, if the violation was not committed by a person

operating a commercial motor vehicle, and if the person does not commit another alcohol-related driving offense during the ten-year period following the violation.

This substitute amendment eliminates the requirements that DOT retain or purge certain OWI-related records, but forbids courts to count, for the purposes of determining a penalty, any OWI-related offense that occurred within ten years of another OWI-related offense, so long as the offense does not involve causing serious bodily injury or death to another person or the person has not committed a third OWI-related offense.

---

***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

1           SECTION 1. 343.23 (2) (b) of the statutes, as affected by 2003 Wisconsin Acts 30,  
2           33 and 320, is amended to read:

3           343.23 (2) (b) The information specified in pars. (a) and (am) must be filed by  
4           the department so that the complete operator's record is available for the use of the  
5           secretary in determining whether operating privileges of such person shall be  
6           suspended, revoked, canceled, or withheld, or the person disqualified, in the interest  
7           of public safety. ~~The record of suspensions, revocations, and convictions that would~~  
8           ~~be counted under s. 343.307 (2) shall be maintained permanently, except that the~~  
9           ~~department shall purge the record of a first violation of s. 23.33 (4c) (a) 2., 30.681 (1)~~  
10          ~~(b) 1., 346.63 (1) (b), or 350.101 (1) (b) after 10 years, if the person who committed the~~  
11          ~~violation had a blood alcohol concentration of 0.08 or more but less than 0.1 at the~~  
12          ~~time of the violation, if the person does not have a commercial driver license, if the~~  
13          ~~violation was not committed by a person operating a commercial motor vehicle, and~~  
14          ~~if the person has no other suspension, revocation, or conviction that would be counted~~  
15          ~~under s. 343.307 during that 10-year period. The record of convictions for~~  
16          disqualifying offenses under s. 343.315 (2) (h) shall be maintained for at least 10  
17          years. The record of convictions for disqualifying offenses under s. 343.315 (2) (f) and  
18          (j), and all records specified in par. (am), shall be maintained for at least 3 years. The

1 record of convictions for disqualifying offenses under s. 343.315 (2) (a) to (e) shall be  
2 maintained permanently, except that 5 years after a licensee transfers residency to  
3 another state such record may be transferred to another state of licensure of the  
4 licensee if that state accepts responsibility for maintaining a permanent record of  
5 convictions for disqualifying offenses. Such reports and records may be cumulative  
6 beyond the period for which a license is granted, but the secretary, in exercising the  
7 power of suspension granted under s. 343.32 (2) may consider only those reports and  
8 records entered during the 4-year period immediately preceding the exercise of such  
9 power of suspension.

10 **SECTION 2.** 343.307 (1) (c) of the statutes is amended to read:

11 343.307 (1) (c) Convictions for violations under s. 346.63 (2) ~~or 940.25, or s.~~  
12 ~~940.09 where the offense involved the use of a vehicle.~~

13 **SECTION 3.** 343.307 (1) (g) of the statutes is created to read:

14 343.307 (1) (g) Convictions for violations under s. 940.25, or s. 940.09 where  
15 the offense involved the use of a vehicle.

16 **SECTION 4.** 346.65 (2) (b) of the statutes is amended to read:

17 346.65 (2) (b) Except as provided in par. (f), shall be fined not less than \$350  
18 nor more than \$1,100 and imprisoned for not less than 5 days nor more than 6 months  
19 if the number of ~~convictions under ss. 940.09 (1) and 940.25 in the person's lifetime,~~  
20 ~~plus the total number of suspensions, revocations and other convictions counted~~  
21 ~~under s. 343.307 (1) within a 10-year period, occurrences counted under sub. (2d)~~  
22 ~~equals 2, except that suspensions, revocations or convictions arising out of the same~~  
23 ~~incident or occurrence shall be counted as one.~~

24 **SECTION 5.** 346.65 (2) (c) of the statutes is amended to read:

1           346.65 (2) (c) Except as provided in pars. (f) and (g), shall be fined not less than  
2           \$600 nor more than \$2,000 and imprisoned for not less than 30 days nor more than  
3           one year in the county jail if the number of ~~convictions under ss. 940.09 (1) and 940.25~~  
4           ~~in the person's lifetime, plus the total number of suspensions, revocations and other~~  
5           ~~convictions counted under s. 343.307 (1), occurrences counted under sub. (2d) equals~~  
6           3, ~~except that suspensions, revocations or convictions arising out of the same~~  
7           ~~incident or occurrence shall be counted as one.~~

8           **SECTION 6.** 346.65 (2) (d) of the statutes is amended to read:

9           346.65 (2) (d) Except as provided in pars. (f) and (g), shall be fined not less than  
10           \$600 nor more than \$2,000 and imprisoned for not less than 60 days nor more than  
11           one year in the county jail if the number of ~~convictions under ss. 940.09 (1) and 940.25~~  
12           ~~in the person's lifetime, plus the total number of suspensions, revocations and other~~  
13           ~~convictions counted under s. 343.307 (1), occurrences counted under sub. (2d) equals~~  
14           4, ~~except that suspensions, revocations or convictions arising out of the same~~  
15           ~~incident or occurrence shall be counted as one.~~

16           **SECTION 7.** 346.65 (2) (e) of the statutes is amended to read:

17           346.65 (2) (e) Except as provided in pars. (f) and (g), is guilty of a Class H felony  
18           and shall be fined not less than \$600 and imprisoned for not less than 6 months if  
19           the number of ~~convictions under ss. 940.09 (1) and 940.25 in the person's lifetime,~~  
20           ~~plus the total number of suspensions, revocations and other convictions counted~~  
21           ~~under s. 343.307 (1), occurrences counted under sub. (2d) equals 5 or more, except~~  
22           ~~that suspensions, revocations or convictions arising out of the same incident or~~  
23           ~~occurrence shall be counted as one.~~

24           **SECTION 8.** 346.65 (2c) of the statutes is amended to read:

When counting occurrences under

1           346.65 (2c) In sub. (2) (b) to (e) (2d), the time period shall be measured from  
2           the dates of the refusals or violations that resulted in the revocation or convictions.  
3           If a person has a suspension, revocation or conviction for any offense under a local  
4           ordinance or a state statute of another state that would be counted under s. 343.307  
5           (1), that suspension, revocation or conviction shall count as a prior suspension,  
6           revocation or conviction under sub. (2) (b) to (e) (2d).

and prior offenses

7           **SECTION 9.** 346.65 (2d) of the statutes is created to read:

8           346.65 (2d) (a) ~~In~~ sub. (2) (b) to (e), the court shall count the current offense,  
9           but may not count any suspension, revocation, or conviction described in s. 343.307  
10          (1) (a) to (f) that occurred before January 1, 1989, or that did not occur within 10 years  
11          of any other suspension, revocation, or conviction that is described in s. 343.307 (1),  
12          except that the court shall count all suspensions, revocations, or convictions that are  
13          described in s. 343.307 (1) after either of the following:

14           1. The person ~~is~~ <sup>was</sup> convicted under s. 940.09 (1) or 940.25.

15           2. The person has received a suspension or revocation for, or has been convicted  
16          of, 2 offenses that are described in s. 343.307 (1) (a) to (f) within a 10-year period.

17           (b) The court shall count any suspensions, revocations, or convictions arising  
18          out of the same incident or occurrence as one.

19           **SECTION 10. Initial applicability.**

20           (1) This act first applies to offenses committed on the effective date of this  
21          subsection.

22           **SECTION 11. Effective date.**

23           (1) This act takes effect on September 30, 2005.

24

(END)

and were committed on or after January 1, 1989



2005-2006 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRBs0123/Plins  
PJH:jld:rs

INSERT:

~~SECTION 4.~~ 343.305 (10) (b) 1. of the statutes is amended to read:

\* 343.305 (10) (b) 1. ~~Except as provided in subds. 3. and 4.,~~ The court shall revoke the person's operating privilege under this paragraph according to the number of previous suspensions, revocations or convictions committed on or after January 1, 1989, that would be counted under s. 343.307 (2) (a) to (g), plus the number of previous convictions under s. 940.09 (1) or (s.) 940.25. Suspensions, revocations and convictions arising out of the same incident shall be counted as one. If a person has a conviction, suspension or revocation for any offense that is counted under s. 343.307 (2), that conviction, suspension or revocation shall count as a prior conviction, suspension or revocation under this subdivision if the offense occurred within 10 years of any other offense or if the offense followed any 10-year period during which the person was convicted of 2 or more offenses that could be counted under s. 343.307 (2).

**History:** 1987 a. 3, 27, 399; 1989 a. 7, 31, 56, 105, 359; 1991 a. 39, 251, 277; 1993 a. 16, 105, 315, 317, 491; 1995 a. 27 ss. 6412cnL, 9126 (19); 1995 a. 113, 269, 425, 426, 436, 448; 1997 a. 35, 84, 107, 191, 237, 290; 1999 a. 9, 32, 109; 2001 a. 16 ss. 3421m to 3423j, 4060gk, 4060hw, 4060hy; 2001 a. 104; 2003 a. 97, 199.

~~SECTION 4.~~ 343.305 (10) (b) 2. of the statutes is amended to read:

343.305 (10) (b) 2. Except as provided in subd. 3., 4. or 4m., ~~for the first improper refusal,~~ the court shall revoke the person's operating privilege for one year. After the first 30 days of the revocation period, the person is eligible for an occupational license under s. 343.10.

**History:** 1987 a. 3, 27, 399; 1989 a. 7, 31, 56, 105, 359; 1991 a. 39, 251, 277; 1993 a. 16, 105, 315, 317, 491; 1995 a. 27 ss. 6412cnL, 9126 (19); 1995 a. 113, 269, 425, 426, 436, 448; 1997 a. 35, 84, 107, 191, 237, 290; 1999 a. 9, 32, 109; 2001 a. 16 ss. 3421m to 3423j, 4060gk, 4060hw, 4060hy; 2001 a. 104; 2003 a. 97, 199.

~~SECTION 4.~~ 343.305 (10) (b) 3. of the statutes is amended to read:

343.305 (10) (b) 3. ~~Except as provided in subd. 4m.,~~ if ~~if~~ the number of previous suspensions, revocations, or convictions counted under ss. 940.09 (1) and 940.25 in

the person's lifetime, plus the total number of other convictions, suspensions, and revocations counted under s. 343.307 (2) subd. 1. within a 10-year period, equals 2, the court shall revoke the person's operating privilege for 2 years, unless a longer period of revocation is required under subd. 4m. After the first 90 days of the revocation period or, if the total number of convictions, suspensions, and revocations counted under this subdivision within any 5-year period equals 2 or more, after one year of the revocation period has elapsed, the person is eligible for an occupational license under s. 343.10 if he or she has completed the assessment and is complying with the driver safety plan. \*

**History:** 1987 a. 3, 27, 399; 1989 a. 7, 31, 56, 105, 359; 1991 a. 39, 251, 277; 1993 a. 16, 105, 315, 317, 491; 1995 a. 27 ss. 6412cnL, 9126 (19); 1995 a. 113, 269, 425, 426, 436, 448; 1997 a. 35, 84, 107, 191, 237, 290; 1999 a. 9, 32, 109; 2001 a. 16 ss. 3421m to 3423j, 4060gk, 4060hw, 4060hy; 2001 a. 104; 2003 a. 97, 199.

**SECTION 4.** 343.305 (10) (b) 4. of the statutes is amended to read:

343.305 (10) (b) 4. ~~Except as provided in subd. 4m., if~~ If the number of previous suspensions, revocations, or convictions counted under ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total number of other convictions, suspensions, and revocations counted under s. 343.307 (2), subd. 1. equals 3 or more, the court shall revoke the person's operating privilege for 3 years, unless a longer period of revocation is required under subd. 4m. After the first 120 days of the revocation period or, if the total number of convictions, suspensions, and revocations counted under this subdivision within any 5-year period equals 2 or more, after one year of the revocation period has elapsed, the person is eligible for an occupational license under s. 343.10 if he or she has completed the assessment and is complying with the driver safety plan. \*

**History:** 1987 a. 3, 27, 399; 1989 a. 7, 31, 56, 105, 359; 1991 a. 39, 251, 277; 1993 a. 16, 105, 315, 317, 491; 1995 a. 27 ss. 6412cnL, 9126 (19); 1995 a. 113, 269, 425, 426, 436, 448; 1997 a. 35, 84, 107, 191, 237, 290; 1999 a. 9, 32, 109; 2001 a. 16 ss. 3421m to 3423j, 4060gk, 4060hw, 4060hy; 2001 a. 104; 2003 a. 97, 199.

**Hurley, Peggy**

---

**From:** Sobotik, John  
**Sent:** Wednesday, July 13, 2005 9:45 AM  
**To:** Musser, Terry; Colbert, Kathie  
**Cc:** Hurley, Peggy  
**Subject:** RE: AB 344

I put a call in to Peggy. I don't think so. A simple amendment is probably easier to deal with at this point. I would defer to your and LRB's judgment. But we are talking about tacking 7 words onto an obscure statutory sentence to make sure that the counting is consistent in OWI and refusal cases following convictions for great bodily harm or homicide by intoxicated use of a motor vehicle.

- John

-----  
 John Sobotik  
 Asst. General Counsel  
 Wisconsin Dept. of Transportation  
 4802 Sheboygan Avenue, Room 115B  
 P.O. Box 7910  
 Madison, WI 53707-7910  
 Phone: (608) 267 9320  
 Fax: (608) 267 6734

-----Original Message-----

**From:** Musser, Terry [mailto:Terry.Musser@legis.state.wi.us]  
**Sent:** Wednesday, July 13, 2005 9:27 AM  
**To:** Sobotik, John  
**Subject:** RE: AB 344

Is it such that we should re-draft it?

---

**From:** Sobotik, John  
**Sent:** Wednesday, July 13, 2005 9:24 AM  
**To:** Musser, Terry  
**Subject:** RE: AB 344

Thanks. I did find one oddity in looking at the bill this a.m. I just hit the send button on my e-mail moments ago. Here it is:

-----Original Message-----

**From:** Sobotik, John  
**Sent:** Wednesday, July 13, 2005 9:20 AM  
**To:** Hurley, Peggy; Lawrence, Minette; Basford, Sarah  
**Cc:** Egan, Erin  
**Subject:** RE: Draft review: LRB 05s0123/P1 Topic: Drunk driving

07/13/2005

I had an opportunity to look over LRBs0123/1 this morning. In general, the draft looks very good. I noticed one slight inconsistency in the way the refusal provision treats prior felony convictions for causing great bodily harm or death by OWI. In fact, in looking back at my earlier e-mail, I missed this the first go-around as well.

Section 346.65(2d) proposes to count all offenses occurring after either of those types of felony convictions. Section 343.305((10)(b)1., should do the same. I think all that is needed is to add the words, "or followed a conviction under s. 940.09 or 940.25." on page 3, line 22.

That's the only oddity in the bill that I see.

- John Sobotik

ASSEMBLY SUBSTITUTE AMENDMENT ,  
TO 2005 ASSEMBLY BILL 344

today  
7-13-05

Regen

1 AN ACT *to amend* 343.23 (2) (b), 343.305 (10) (b) 1., 343.305 (10) (b) 2., 343.305  
2 (10) (b) 3., 343.305 (10) (b) 4., 343.307 (1) (c), 346.65 (2) (b), 346.65 (2) (c), 346.65  
3 (2) (d), 346.65 (2) (e) and 346.65 (2c); and *to create* 343.307 (1) (g) and 346.65  
4 (2d) of the statutes; **relating to:** operating while intoxicated and providing a  
5 penalty.

***Analysis by the Legislative Reference Bureau***

Under current law, the Department of Transportation (DOT) maintains a driving record for every person who possesses a driver's license. When DOT receives notice that a person was convicted of an offense relating to operating certain vehicles while intoxicated or operating certain vehicles with a prohibited blood alcohol concentration (OWI-related offense), that information is kept permanently in the person's driving record. Also under current law, when a person commits an OWI-related offense, the court is required to consider the number of previous OWI-related offenses committed by the person to determine the person's penalty.

2003 Wisconsin Act 30 requires DOT to purge the record of a first violation from a driver's record if the person who committed the violation had a blood alcohol concentration between 0.08 and 0.1 at the time of the violation, if the person does not have a commercial driver license, if the violation was not committed by a person

operating a commercial motor vehicle, and if the person does not commit another alcohol-related driving offense during the ten-year period following the violation.

This substitute amendment eliminates the requirements that DOT retain or purge certain OWI-related records, but forbids courts to count, for the purposes of determining a penalty, any OWI-related offense that occurred within ten years of another OWI-related offense, so long as the offense does not involve causing serious bodily injury or death to another person or the person has not committed a third OWI-related offense.

---

***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

1           **SECTION 1.** 343.23 (2) (b) of the statutes, as affected by 2003 Wisconsin Acts 30,  
2 33 and 320, is amended to read:

3           343.23 (2) (b) The information specified in pars. (a) and (am) must be filed by  
4 the department so that the complete operator's record is available for the use of the  
5 secretary in determining whether operating privileges of such person shall be  
6 suspended, revoked, canceled, or withheld, or the person disqualified, in the interest  
7 of public safety. ~~The record of suspensions, revocations, and convictions that would~~  
8 ~~be counted under s. 343.307 (2) shall be maintained permanently, except that the~~  
9 ~~department shall purge the record of a first violation of s. 23.33 (4e) (a) 2., 30.681 (1)~~  
10 ~~(b) 1., 346.63 (1) (b), or 350.101 (1) (b) after 10 years, if the person who committed the~~  
11 ~~violation had a blood alcohol concentration of 0.08 or more but less than 0.1 at the~~  
12 ~~time of the violation, if the person does not have a commercial driver license, if the~~  
13 ~~violation was not committed by a person operating a commercial motor vehicle, and~~  
14 ~~if the person has no other suspension, revocation, or conviction that would be counted~~  
15 ~~under s. 343.307 during that 10-year period. The record of convictions for~~  
16 ~~disqualifying offenses under s. 343.315 (2) (h) shall be maintained for at least 10~~  
17 ~~years. The record of convictions for disqualifying offenses under s. 343.315 (2) (f) and~~  
18 (j), and all records specified in par. (am), shall be maintained for at least 3 years. The

1 record of convictions for disqualifying offenses under s. 343.315 (2) (a) to (e) shall be  
2 maintained permanently, except that 5 years after a licensee transfers residency to  
3 another state such record may be transferred to another state of licensure of the  
4 licensee if that state accepts responsibility for maintaining a permanent record of  
5 convictions for disqualifying offenses. Such reports and records may be cumulative  
6 beyond the period for which a license is granted, but the secretary, in exercising the  
7 power of suspension granted under s. 343.32 (2) may consider only those reports and  
8 records entered during the 4-year period immediately preceding the exercise of such  
9 power of suspension.

10 SECTION 2. 343.305 (10) (b) 1. of the statutes is amended to read:

11 343.305 (10) (b) 1. ~~Except as provided in subs. 3. and 4., the~~ The court shall  
12 revoke the person's operating privilege under this paragraph according to the  
13 number of previous suspensions, revocations or convictions committed on or after  
14 January 1, 1989, that would be counted under s. 343.307 (2) (a) to (g), plus the  
15 number of previous convictions under s. 940.09 (1) or 940.25. Suspensions,  
16 revocations and convictions arising out of the same incident shall be counted as one.  
17 If a person has a conviction, suspension or revocation for any offense that is counted  
18 under s. 343.307 (2), that conviction, suspension or revocation shall count as a prior  
19 conviction, suspension or revocation under this subdivision if the offense occurred  
20 within 10 years of any other offense ~~or if the offense followed any 10-year period~~  
21 during which the person was convicted of 2 or more offenses that could be counted  
22 under s. 343.307 (2). or followed a conviction under  
s. 940.09 or 940.25

23 SECTION 3. 343.305 (10) (b) 2. of the statutes is amended to read:

24 343.305 (10) (b) 2. Except as provided in subd. 3., 4. or 4m., ~~for the first~~  
25 ~~improper refusal~~, the court shall revoke the person's operating privilege for one year.

if the offense

Score

1 After the first 30 days of the revocation period, the person is eligible for an  
2 occupational license under s. 343.10.

3 **SECTION 4.** 343.305 (10) (b) 3. of the statutes is amended to read:

4 343.305 (10) (b) 3. ~~Except as provided in subd. 4m., if~~ If the number of previous  
5 suspensions, revocations, or convictions counted under ss. 940.09 (1) and 940.25 in  
6 the person's lifetime, plus the total number of other convictions, suspensions, and  
7 revocations counted under s. 343.307 (2) subd. 1. within a 10-year period, equals 2,  
8 the court shall revoke the person's operating privilege for 2 years, unless a longer  
9 period of revocation is required under subd. 4m. After the first 90 days of the  
10 revocation period or, if the total number of convictions, suspensions, and revocations  
11 counted under this subdivision within any 5-year period equals 2 or more, after one  
12 year of the revocation period has elapsed, the person is eligible for an occupational  
13 license under s. 343.10 if he or she has completed the assessment and is complying  
14 with the driver safety plan.

15 **SECTION 5.** 343.305 (10) (b) 4. of the statutes is amended to read:

16 343.305 (10) (b) 4. ~~Except as provided in subd. 4m., if~~ If the number of previous  
17 suspensions, revocations, or convictions counted under ss. 940.09 (1) and 940.25 in  
18 the person's lifetime, plus the total number of other convictions, suspensions, and  
19 revocations counted under s. 343.307 (2), subd. 1. equals 3 or more, the court shall  
20 revoke the person's operating privilege for 3 years, unless a longer period of  
21 revocation is required under subd. 4m. After the first 120 days of the revocation  
22 period or, if the total number of convictions, suspensions, and revocations counted  
23 under this subdivision within any 5-year period equals 2 or more, after one year of  
24 the revocation period has elapsed, the person is eligible for an occupational license



1 under s. 343.10 if he or she has completed the assessment and is complying with the  
2 driver safety plan.

3 **SECTION 6.** 343.307 (1) (c) of the statutes is amended to read:

4 343.307 (1) (c) Convictions for violations under s. 346.63 (2) ~~or 940.25, or s.~~  
5 ~~940.09 where the offense involved the use of a vehicle.~~

6 **SECTION 7.** 343.307 (1) (g) of the statutes is created to read:

7 343.307 (1) (g) Convictions for violations under s. 940.25, or s. 940.09 where  
8 the offense involved the use of a vehicle.

9 **SECTION 8.** 346.65 (2) (b) of the statutes is amended to read:

10 346.65 (2) (b) Except as provided in par. (f), shall be fined not less than \$350  
11 nor more than \$1,100 and imprisoned for not less than 5 days nor more than 6 months  
12 if the number of ~~convictions under ss. 940.09 (1) and 940.25 in the person's lifetime,~~  
13 ~~plus the total number of suspensions, revocations and other convictions counted~~  
14 ~~under s. 343.307 (1) within a 10-year period, occurrences counted under sub. (2d)~~  
15 ~~equals 2, except that suspensions, revocations or convictions arising out of the same~~  
16 ~~incident or occurrence shall be counted as one.~~

17 **SECTION 9.** 346.65 (2) (c) of the statutes is amended to read:

18 346.65 (2) (c) Except as provided in pars. (f) and (g), shall be fined not less than  
19 \$600 nor more than \$2,000 and imprisoned for not less than 30 days nor more than  
20 one year in the county jail if the number of ~~convictions under ss. 940.09 (1) and 940.25~~  
21 ~~in the person's lifetime, plus the total number of suspensions, revocations and other~~  
22 ~~convictions counted under s. 343.307 (1), occurrences counted under sub. (2d) equals~~  
23 ~~3, except that suspensions, revocations or convictions arising out of the same~~  
24 ~~incident or occurrence shall be counted as one.~~

25 **SECTION 10.** 346.65 (2) (d) of the statutes is amended to read:

1           346.65 (2) (d) Except as provided in pars. (f) and (g), shall be fined not less than  
2           \$600 nor more than \$2,000 and imprisoned for not less than 60 days nor more than  
3           one year in the county jail if the number of ~~convictions under ss. 940.09 (1) and 940.25~~  
4           ~~in the person's lifetime, plus the total number of suspensions, revocations and other~~  
5           ~~convictions counted under s. 343.307 (1), occurrences counted under sub. (2d) equals~~  
6           ~~4, except that suspensions, revocations or convictions arising out of the same~~  
7           ~~incident or occurrence shall be counted as one.~~

8           **SECTION 11.** 346.65 (2) (e) of the statutes is amended to read:

9           346.65 (2) (e) Except as provided in pars. (f) and (g), is guilty of a Class H felony  
10           and shall be fined not less than \$600 and imprisoned for not less than 6 months if  
11           the number of ~~convictions under ss. 940.09 (1) and 940.25 in the person's lifetime,~~  
12           ~~plus the total number of suspensions, revocations and other convictions counted~~  
13           ~~under s. 343.307 (1), occurrences counted under sub. (2d) equals 5 or more, except~~  
14           ~~that suspensions, revocations or convictions arising out of the same incident or~~  
15           ~~occurrence shall be counted as one.~~

16           **SECTION 12.** 346.65 (2c) of the statutes is amended to read:

17           346.65 (2c) In sub. (2) (b) to (e) (2d), the time period shall be measured from  
18           the dates of the refusals or violations that resulted in the revocation or convictions.  
19           If a person has a suspension, revocation or conviction for any offense under a local  
20           ordinance or a state statute of another state that would be counted under s. 343.307  
21           (1), that suspension, revocation or conviction shall count as a prior suspension,  
22           revocation or conviction under sub. (2) (b) to (e) (2d).

23           **SECTION 13.** 346.65 (2d) of the statutes is created to read:

24           346.65 (2d) (a) When counting occurrences under sub. (2) (b) to (e), the court  
25           shall count the current offense and prior offenses, but may not count any suspension,

1 revocation, or conviction described in s. 343.307 (1) (a) to (f) that occurred before  
2 January 1, 1989, or that did not occur within 10 years of any other suspension,  
3 revocation, or conviction that is described in s. 343.307 (1), except that the court shall  
4 count all suspensions, revocations, or convictions that are described in s. 343.307 (1)  
5 after either of the following:

6 1. The person was convicted under s. 940.09 (1) or 940.25.

7 2. The person has received a suspension or revocation for, or has been convicted  
8 of, 2 offenses that are described in s. 343.307 (1) (a) to (f) within a 10-year period and  
9 were committed on or after January 1, 1989.

10 (b) The court shall count any suspensions, revocations, or convictions arising  
11 out of the same incident or occurrence as one.

12 **SECTION 14. Initial applicability.**

13 (1) This act first applies to offenses committed on the effective date of this  
14 subsection.

15 **SECTION 15. Effective date.**

16 (1) This act takes effect on September 30, 2005.

17 (END)